IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.422 OF 2005
IN
ARBITRATION PETITION NO. 538 OF 2004

M/s.Chitralekha Builders & Anr. ...Appellants
V/s.
Mrs.Kusum B. Gourale @ Gitanjali G.Sohoni. ...Respondent
And
GIC Employees Sonal Vihar Co-op. Soc.Ltd. ...Addl.Respondent

Mr.E.K. Sasidharan for Appellant.
Mr.H.N. Thakore with Ms.Jyoti Ghag i/b. M/s.Thakore & Jariwala for Respondent No.1.
Mr.P.S. Rao i/b. A.C. Mahimkar for Caveator.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : AUGUST 19, 2005.

P.C. :-

. This appeal which is directed against the order dated 24th January, 2005 passed by the learned Single Judge in Arbitration Petition No.538/04 was heard on admission.

Factual Matrix :

2. The factual matrix reveals that the Registered partnership firm under the name and style M/s.Chitralekha Builders was formed under Deed of Partnership dated 8th April, 1989.

3. Prior to the formation of this partnership firm, one of the partners constituting the firm viz. Mrs.Kusum alias Geetanjali Sohoni had entered into an agreement to purchase property bearing CTS No.727 situated at Village Mulund in her personal capacity to do business of development of the property under the business name M/s.Chitralekha Builders. Thus, prior to formation of partnership firm, she was a proprietress of M/s.Chitralekha Builders. Somewhere in the year May, 1980, she entered into an agreement to sell part of the property to be developed in favour of GIC Employees Sonal Vihar Co-operative Soc.Ltd. It appears that after formation of partnership firm some disputes arose between the partners; which ultimately, led to the appointment of an arbitrator to arbitrate between the parties to the dispute.

4. However, prior to the appointment of the arbitrator, on 8th December, 2004, the petitioner filed Arbitration Petition No.538/04 praying for interim relief under Section 9 of the Arbitration and Conciliation Act, 1996.

5. This petition was heard by the learned Single Judge of this Court on 24th January, 2005, who was pleased to dispose of the petition at the stage of admission by the short order reproduced hereinbelow :-

> "The dispute between the parties arose in the year 2002 when the petitioners addressed a letter to the Respondent in the month of March, 2002. The Arbitration clauses does not lay down procedure for appointment of Arbitrator. Therefore, it was for the petitioners to take steps for appointment of Arbitrator. But nothing was done. Ultimately in July, 2004, names of Arbitrators were suggested. The Respondent did not respond. Therefore, the petitioners were to take steps for appointment

> of arbitrator. But the petitioners did not take steps thereafter. This conduct of the Petitioners do not entitle the petitioners to any interim relief. Petition therefore, disposed of."

. The above order is a matter challenged in this appeal, at the instance of the appellants.

Submissions :

6. Learned Counsel for the appellants submits that under Section 9 of the Arbitration and Conciliation Act, 1996, the party to the arbitration proceedings can apply at any time i.e. before or during the arbitration proceeding for interim relief. He placed reliance on the judgment of the Apex Court in the case of **M/s.Sundaram Finance Ltd. v. M/s.NEPC India Ltd. AIR (1999) SC 565.** He submits that prima facie case and balance of convenience lies in favour of the petitioner as the petitioner hold 77% share in the immovable property of the partnership firm as such he has a major

share in the property of the firm. According to the appellant, respondent hold 23% share. She is a partner holding minor share. She is trying to sell the partnership firm property without the consent of the petitioner, who is a partner holding major share. According to him, under Section 18 of the Partnership Act, a consent of the other partners is necessary to deal with immovable property of the partnership firm as such in order to prevent the respondent Mrs.Kusum, interim order during the pendency of the dispute between the partners was necessary and ought to have been granted by the learned Single Judge to preserve the property of the firm. He submits that the appellant has not only made out a prima facie case showing the balance of convenience is in favour of the appellant but the appellant may suffer serious injury with respect to his interest in immovable property if the interim relief is not granted. He thus prayed for setting aside impugned order and urged for grant of interim relief in favour of the appellant as prayed.

7. Per contra, learned counsel for the

Respondent-Mrs.Kusum submits that in view of the subsequent developments, his prayer for interim relief has become infractuous. He further submits that the consent terms arrived at between Mrs.Kusum and her vendors have already been recorded by the learned Single Judge and in terms thereof, the consent decree has also been passed. In terms of the consent terms culminating in a consent decree, the nominee of the respondent has already obtained the deed of conveyance. In this view of the matter, he submits that the original petition itself does not survive. Consequently, the appeal be dismissed for want of cause of action.

8. Learned Counsel for the respondent-Mrs.Kusum further submits that none of the prayers can be said to be within the four corners of section 9 of the Arbitration and Conciliation Act, 1996. That none of the interim prayers can be granted in favour of the appellants as each of them are hit by Section 41 of the Specific Relief Act. While elaborating the submissions, he submits that prayer clauses (a) and (b) are hit by Section 41(a) and 41(b) respectively. Consequently, the

petitioners are liable to be dismissed. He also tried to support the impugned order passed by the learned Single Judge.

Consideration :

9. Having heard the rival parties, each and every contention raised by the learned Counsel for the respondent, in our considered view is liable to be sustained; Firstly, because no fault can be found with the view taken by the learned Single Judge on the facts of this case. Secondly, in view of the subsequent events, it is not in dispute that the Consent Terms were recorded by the learned Single Judge and Consent Decree in terms thereof was passed and pursuant to Consent Decree, the nominee of respondent has obtained conveyance deed in its favour. In this view of the matter, none of the prayers for interim relief would now survive. Thirdly, none of the prayer clauses are within the four corners of Section 9. Each of them are travelling beyond the length and breath of Section 3 of the Arbitration and Conciliation Act, 1996. Fourthly,

both the prayer clauses are hit by Sections 41(a) and 41(b), respectively, of the Specific Relief Act.

10. In that view of the matter, though the view taken by the learned Single Judge may have been based on one aspect of the matter, the impugned order can very well be supported and sustained if the other aspects mentioned hereinabove are taken into account cumulatively.

11. For the reasons recorded hereinabove, we are of the opinion that no case is made out to entertain this appeal. The same is, therefore, dismissed in limine with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**